

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 107 :
 :
 v. :
 : Case No. PERA-C-97-391-E
UPPER MORELAND-HATBORO JOINT :
SEWER AUTHORITY :

FINAL ORDER

On July 21, 1999, the Upper Moreland-Hatboro Joint Sewer Authority (Authority) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to the proposed decision and order (PDO) entered on July 1, 1999. In the PDO, the hearing examiner concluded that the Authority committed unfair practices in violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by refusing to sign a "memorandum of agreement" that was reached by the negotiating teams for the Authority and Teamsters Local 107 (Union). The Authority also requested oral argument on the exceptions.¹ Pursuant to an extension granted by the Secretary of the Board, the Authority filed a brief in support of its exceptions on July 30, 1999. On August 2, 1999, the Union filed a brief in response to the Authority's exceptions. After a thorough review of the exceptions and all matters of record, the Board makes the following:

AMENDED FINDINGS OF FACT

17. That at a bargaining session held on June 24, 1997, the Authority's labor counsel produced a typewritten memorandum outlining the terms to which the parties' negotiators had agreed at the previous bargaining session. The memorandum did not include language regarding employe certification in wastewater treatment. During the course of negotiations that day, the parties' bargaining teams reached agreement on certification language, which was reduced to writing by the Authority's labor counsel and was attached to the "memorandum of agreement" that was signed by negotiators for both parties. The language to which the parties' negotiators agreed provided, inter alia, that certain employes who do not ordinarily perform wastewater treatment (mechanics and road crew members) need not be certified, but are ineligible for overtime unless they obtain certification. (N.T. 18-22, 58-62; Union Exhibit 2; Respondent Exhibit 3)

22. That in previous contract negotiations between the Authority and the Union, the tentative agreement reached by the parties' bargaining teams was implemented without a formal ratification vote by the Authority's board of directors. However, the Authority's board of directors reviewed and approved the tentative agreement prior to its implementation. (N.T. 87-88)

23. That the Authority was established by Upper Moreland Township and Hatboro Borough pursuant to the Municipal Authorities Act of 1945, and

¹ The request is denied because this case does not involve novel issues of fact or law.

performs sewage treatment for both municipalities. Each municipality appoints three members of the Authority's board of directors. (N.T. 84)

DISCUSSION

The essential facts of this case are as follows. The Union is the bargaining representative of a unit of Authority employees. The Union and the Authority were parties to a collective bargaining agreement that expired on May 31, 1997. The agreement provided that employees hired after June 1, 1991 (excluding office staff) must possess a wastewater treatment certificate from the Commonwealth of Pennsylvania.

During May to June 1997, the parties engaged in negotiations for a successor agreement. The Authority's bargaining team did not include any members of its board of directors, but rather consisted of its general manager and its labor counsel. The Authority's bargaining team advised the Union's negotiators that they were consulting with the Authority's board, and did not state that the board of directors had to ratify any tentative agreement reached at the bargaining table.

The Union's proposals included elimination of the requirement that more recently hired employees possess state certification in wastewater treatment. However, the Authority declined to agree to the Union's proposal and this issue became one of the main points of contention in the negotiations.

At a bargaining session held on June 24, 1997, the Authority's labor counsel produced a typewritten memorandum outlining the terms to which the bargaining teams had agreed at a prior bargaining session. The memorandum did not include any language on the issue of employee certification. During the course of negotiations that day, the parties' bargaining teams reached agreement on certification language, which was reduced to writing by the Authority's labor counsel and was attached to the "memorandum of agreement" that was signed by negotiators for both parties. The language to which the parties' negotiators agreed provided, inter alia, that certain employees who do not ordinarily perform wastewater treatment (mechanics and road crew members) need not be certified, but are ineligible for overtime unless they obtain certification.

The Authority's bargaining team did not inform the Union's negotiators that the memorandum of agreement was subject to ratification by the Authority's board of directors or conditioned upon board approval. The Authority's board of directors met shortly after the June 24 bargaining session and determined that it would not approve the memorandum of agreement because of the language changes regarding employee certification.

In previous negotiations between the Authority and the Union, the tentative agreement reached by the parties' bargaining teams was implemented without a formal ratification vote by the Authority's board of directors. However, the Authority's board reviewed and approved the tentative agreement prior to its implementation.

The hearing examiner concluded in the PDO that the Authority's bargaining team had apparent authority to reach a binding collective bargaining agreement and that the Authority's refusal to execute the agreement was an unfair practice. The hearing examiner's finding of

apparent authority was based on the Authority's failure to expressly reserve a right to ratify any agreement reached by its negotiators, the Authority's implementation of a prior tentative agreement without formal ratification by its board of directors, and its negotiators' representation that they were consulting with the Authority's board regarding the negotiations.

The Authority initially excepts to the hearing examiner's alleged failure to find that members of the Authority's board of directors did not participate in the negotiations. However, this exception is meritless because the hearing examiner found that the Authority was represented in the negotiations by its general manager and its labor counsel, and that neither of these individuals was a member of its board of directors (FF 5, 6, PDO at 1).

The Authority also excepts to the hearing examiner's conclusion that it is required to execute the memorandum of agreement that was reached by the parties' negotiators at the bargaining table. The Authority argues that the Municipal Authorities Act (MAA) requires that its board of directors ratify any agreement concerning its employees' terms and conditions of employment, and that the hearing examiner erred in holding that this statutory requirement could be waived through inaction (its negotiators' failure to expressly state that any agreement must be ratified by the Authority's board of directors). The Authority cites various cases for the proposition that the governing body of a public employer must in some manner ratify a collective bargaining agreement in order for it to be binding on the employer. See, e.g., Northwest Tri-County Intermediate Unit # 5 Board of Directors, 6 PPER 285 (Nisi Decision and Order, 1975); City of Farrell, 6 PPER 102 (Nisi Decision and Order, 1975); Somerset Borough, 18 PPER ¶ 18085 (Final Order, 1987); City of Johnstown, 22 PPER ¶ 22199 (Proposed Decision and Order, 1991).

In its brief in response to the Authority's exceptions, the Union essentially argues that the MAA does not require the Authority's board to ratify a collective bargaining agreement, and cites several cases for the proposition that absent express reservation of a ratification right, a party's negotiators have apparent authority to bind the party. City of Philadelphia, 27 PPER ¶ 27185 (Final Order, 1996); Northampton School District, 22 PPER ¶ 22202 (Proposed Decision and Order, 1991); Richland School District, 22 PPER ¶ 22077 (Proposed Decision and Order, 1991).

However, these cases are not on point because they did not involve the issue presented here of whether a public employer must expressly reserve a right of ratification where the employer's enabling legislation statutorily requires that its governing body take any action regarding the matter in dispute. Indeed, Northampton and Richland involved the different question of whether union representatives had apparent authority to bind the union to an agreement with the employer, and there was no claim of a statutorily-imposed ratification right. City of Philadelphia is likewise not on point because it involved settlement of a dispute under the existing collective bargaining agreement rather than negotiation of a new agreement, and in that case "[t]he City offered no evidence that the agreement was subject to ratification by the City." 27 PPER at 426.

In contrast, the Authority here relies on the MAA, which provides in Sections 306 and 309: that the powers of a municipal authority "shall be exercised" by its board of directors; that these powers include "to make

contracts of every name and nature" and "to appoint officers, agents, employes and servants, to prescribe their duties and to fix their compensation"; that a majority of the board of directors "shall constitute a quorum of the board for the purpose of organizing the Authority and conducting the business thereof; that "all action may be taken by a vote of a majority of the members present, unless in any case the by-laws shall require a larger number"; and that the board of directors "shall fix and determine the number of officers, agents and employes of the Authority and their respective powers, duties and compensation" Thus, the Authority's enabling legislation statutorily reserves the power to enter into contracts fixing employe terms and conditions of employment for its board of directors.

In similar circumstances where a public employer's enabling legislation has mandated that its governing body take any action regarding the disputed matter, the Board has declined to enforce alleged agreements between the employe representative and employer absent proof that a majority of the employer's governing body approved the agreement. See, e.g., Farrell, supra; Johnstown, supra; County of Erie, 10 PPER ¶ 10174 (Nisi Decision and Order, 1979). Yet in none of these cases was there a finding that the employer's negotiators expressly reserved a right of ratification by the employer's governing body. In effect, the Board has determined that the public employer's enabling legislation may statutorily place the employe representative on notice of the need for ratification by its governing body.

The above-cited decisions of the Board are consistent with long-standing appellate authority, in which the courts have repeatedly stated that persons who contract with municipalities or municipal authorities do so at their peril and must inquire into the powers of the municipal officers or agents with whom they are negotiating to reach a binding agreement. See, e.g., Alco Parking Corporation v. Public Parking Authority of Pittsburgh, 706 A.2d 343 (Pa. Super. 1998); Pittsburgh Baseball, Inc. v. Stadium Authority of City of Pittsburgh, 630 A.2d 505 (Pa. Cmwlt. 1993); Edmondson v. Zetusky, 674 A.2d 760 (Pa. Cmwlt. 1996); Moore v. Reed, 559 A.2d 602 (Pa. Cmwlt. 1989), appeal denied, 527 Pa. 639-660, 593 A.2d 428 (1991); Pittsburgh Paving Co. v. City of Pittsburgh, 332 Pa. 563, 3 A.2d 905 (1938). For example, in Moore v. Reed, Commonwealth Court held that negotiation of a contract is a legislative function and that a contract negotiated by the city's mayor was not binding without the assent of its legislative body (city council). Similarly, in Pittsburgh Baseball, Judge Doyle of Commonwealth Court (now President Judge) authored an opinion that concurred with the conclusion in the majority opinion that the city was not bound by a contract negotiated by the city's mayor to which city council did not assent. Judge Doyle observed that "no Pennsylvania case has been cited as authority that mere municipal inaction can constitute ratification of a defective contract" and that "such a policy would be unwise." 630 A.2d at 510.

In view of the provisions of the MAA which grant exclusive authority to fix employe terms and conditions of employment to the Authority's board, we find contrary to the PDO that the Authority is not bound by the memorandum of agreement to which a majority of its board of directors did not assent, and did not engage in bad faith bargaining by failing to sign that agreement. In reaching a similar result in County of Erie, the Board stated:

"That the County. . . refused to approve the agreement does not indicate [that] the County bargained in bad faith. Collective bargaining cannot be conducted at the table with all interested persons present. As a result, parties employ representatives to conduct their negotiations. . . We find that [the County negotiator's] eventual lack of the power to bind the County to the terms of a tentative agreement which he endorsed, does not constitute bad faith bargaining or violate the Act."

10 PPER at 280.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions in part, sustain the exceptions in part and set aside the proposed decision and order consistent with the above discussion.

CONCLUSIONS

That CONCLUSIONS numbers 1 through 3 inclusive, as set forth in the proposed decision and order, are affirmed and incorporated by reference herein.

That CONCLUSION number 4 in the proposed decision and order is hereby vacated and an additional conclusion is made:

5. That the Authority has not committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the proposed decision and order in the above-captioned matter be and the same are hereby dismissed in part and sustained in part, that the Order on page 6 of the proposed decision and order be and the same is hereby vacated and set aside, and

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that the charge of unfair practices is dismissed and the complaint issued thereon is rescinded.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania, pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, and Members L. Dennis Martire and Edward G. Feehan, this nineteenth day of October, 1999. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.